

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

**ENTRY DENYING DEFENDANTS' MOTION TO DISMISS**  
**AND REFERRING NON-COMPLIANCE WITH COURT'S PRIOR ORDER**  
**TO MAGISTRATE JUDGE FOR FURTHER CONSIDERATION**

(Docket No. 51)

On April 24, 2009, after granting Defendants' Motion to Compel and ordering Plaintiff to produce certain discovery, Magistrate Judge Baker issued an order requiring Plaintiff to pay to Defendants' counsel \$928.00 representing the attorney's fees incurred by Defendants in preparing their Motion to Compel and attending the February 23, 2009, hearing thereon. The money was to be paid to Defendants on or before May 24, 2009, but Plaintiff failed to deliver the payment as ordered. After several letters back and forth between counsel, Plaintiff's counsel promised Defendants that the money would be paid by July 13, 2009, but the money was not paid by that date, either. Defendants thus filed a Motion to Dismiss, pursuant to Fed. R. Civ. P. 41(b), for Plaintiff's failure to comply with the Magistrate Judge's April 24, 2009, order. Defendants' Motion to Dismiss this case (at Docket No. 51) is now before the Court, and the Court is advised that as of today's date – *a full eleven months after the Magistrate Judge issued his order* – Plaintiff has still

not tendered the required payment to Defendants.

Although Defendants' Motion to Dismiss is well taken and granting it would be well within the Court's discretion, the Court will not prejudice Plaintiff for the repeated, serious failings of her lawyer. The Court, thus, DENIES Defendants' Motion to Dismiss. However, the Court, pursuant to 28 U.S.C. § 636(b)(1), refers Attorney Kendall's non-compliance with the Magistrate Judge's April 24, 2009, order back to the Magistrate Judge for consideration of whether further sanctions should be imposed.

IT IS SO ORDERED.

Date: 03/25/2010



SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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